IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 82 of 2005

Uttar Pradesh State Road Transport Corporation
Through its Regional Manager,
Kumaon Region, Nainital.

…….. Appellant

Versus

1. Ganesh Singh Negi
   S/o late Shri Ram Singh alias Roop Singh
   R/o Village Malli Mirai, Tehsil Dawarahat,
   District Almora.
2. Raghubar Dutt Pande
   S/o Sri Jai Vallabh Pande,
   R/o Village Gawar, Dwarahat,
   District Almora.

……. Respondents

Along with

Appeal From Order No. 83 of 2005

Uttar Pradesh State Road Transport Corporation
Through its Regional Manager,
Kumaon Region, Nainital.

…….. Appellant

Versus

1. Ganesh Singh Negi
   S/o Late Shri Ram Singh alias Roop Singh
   R/o Village Malli Mirai, Tehsil Dawarahat,
   District Almora.
2. Raghubar Dutt Pande
   S/o Sri Jai Vallabh Pande,
   R/o Village Gawar, Dwarahat,
   District Almora.

……. Respondents

And

Appeal From Order No. 84 of 2005

Uttar Pradesh State Road Transport Corporation

Through its Regional Manager,
Kumaon Region, Nainital.

…….. Appellant

Versus

1. Ganesh Singh Negi
   S/o Late Shri Ram Singh alias Roop Singh
   R/o Village Malli Mirai, Tehsil Dawarahat,
   District Almora.
2. Raghubar Dutt Pande
   S/o Sri Jai Vallabh Pande,
   R/o Village Gawar, Dwarahat,
   District Almora.

……. Respondents

Mr. A.N. Sharma, Advocate for the appellant.
Mr. B.M. Pingal, Advocate for claimant – respondent No.1

Hon'ble Prafulla C. Pant, J.

These appeals, preferred under Section 173 of the Motor vehicles Act, 1988, are directed against the award dated 20th November, 2004, passed by the Motor Accident Claims Tribunal / District Judge Almora in claim petition No. 19 of 2004, 20 of 2004 and 21 of 2004, whereby an amount of Rs. 22,000/-, Rs. 1,87,000/- and Rs. 1,50,000/- respectively has been awarded as compensation in favour of the claimant – respondent No. 1.

2) Brief facts of the case are that claimant – respondent, Ganesh Singh Negi along with his 24 years old wife Mamta Negi and 1½ years old son Nirmal Negi, were traveling on 09.02.2003 in bus registration No. UP 02/ 7055 belonging to the appellant U.P. State Road Transport Corporation from Ranikhet to their village Malli Mirai. The said vehicle was being driven rashly and negligently by its driver Raghubar Dutt and, consequently, fell in a gorge resulting in death of claimant's wife and claimant's son. The accident in question

occurred at about 4:00 P.M. on 09.02.2003 near village Matela. Claimants wife and son both succumbed to their injuries around 5:00 P.M. on the same day of accident in Civil Hospital Rankhet. The claimant – respondent filed separate claim petitions for compensation on account of injuries received by him to the tune of Rs. 8,29,000/- (in clam petition No. 19 of 2004); on account of death of his wife to the tune of Rs. 7,72,000/- (in claim petition No.20 of 2004); and on account of death of his minor son to the tune of Rs. 3,67,500/- (in claim petition No. 21 of 2004). It is alleged by the claimant that his wife used to earn Rs. 3,000/- per month by selling milk, curd and cereals etc. According to the claimant he himself was admitted in Civil Hospital Ranikhet, but since there were fractures in his hand, he was refereed to Base Hospital Haldwani to get plastered his injuries, and plaster could be removed only after 45 days. It has been further alleged that he could not appear in the examination scheduled to be held for selection of Class IV employees in the Civil court and also got deprived from doing work as an agriculturist for five to six months. It is also alleged that he had to spent Rs. 30,000/- on his treatment in Haldwani alone. Apart from that, he spent Rs. 5,000/- for treatment of his wife and son before their death. He has also claimed compensation on account of loss of love and affection of his beloved wife and son, and further amount on account of pain and agony suffered by him due to the injuries received.

3) The U.P. State Road Transport Corporation contested the claim petitions by filing the written statement and denied that the accident took place due to the negligence of the driver. The appellant (U.P.S.R.T.C.) pleaded before the trial

court that due to the incoming scooter from the opposite side, driver of the bus had to save the scooterist due to which when the brakes were applied, it lost the control over the bus and the bus fell into a gorge. The driver of the vehicle in question did not contest the petitions. In the claim petitions, following issues were framed by the learned Motor Accident Claims Tribunal:

ISSUES (CLAIM PETITION No. 19/2004)

1. Whether on 09.02.2003 at about 4:00 p.m., a motor accident took place near Village Matela on Ranikhet – Dwarahat Road due to negligence of the driver of Bus No. U.P. 02 / 7055 resulting into serious and grievours injuries to claimant Ganesh Singh Negi S/o Ram Singh alias Roop Singh Negi?
2. Whether the claimant is entitled to any compensation? If so, from which of the parties?

ISSUES (CLAIM PETITION No. 20/2004)

1. Whether on 09.02.2003 at about 4:00 p.m., a motor accident took place near Village Matela on Ranikhet – Dwarahat Road due to negligence of the driver of Bus No. U.P. 02 / 7055 resulting into death on account of serious and grievours injuries to Smt. Mamta Negi W/o Ganesh Singh Negi?
2. Whether the claimant is entitled to any compensation? If so, from which of the parties?

ISSUES (CLAIM PETITION No. 21/2004)

1. Whether on 09.02.2003 at about 4:00 p.m., a motor accident took place near Village Matela on Ranikhet – Dwarahat Road due to negligence of

the driver of Bus No. U.P. 02 / 7055 resulting into death on account of serious and grievours injuries to Nirmal Negi S/o Ganesh Singh Negi?

2. Whether the claimant is entitled to any compensation? If so, from which of the parties?

4) Learned Tribunal consolidated all the three claim petitions and recorded the evidence in the leading case No. 19 of 2004. After recording the evidence and hearing the parties, learned Tribunal found that the accident had taken place due to the rash and negligent driving on the part of the driver of the U.P. State Road Transport Corporation and the claimant was entitled to receive compensation in all the three cases. However, as to the amount of compensation, the Tribunal found that the claimant is entitled only to Rs. 22,000/- (i.e. on account of injuries received by him) in the claim petition No. 19 of 2004 and Rs. 1,87,000/- (for loss of life of his wife) in claim petition No. 20 of 2004 and Rs. 1,50,000/- (on account of death of his son) in claim petition No. 21 of 2004. Aggrieved by which, three separate appeals were preferred by U.P. State Road Transport Corporation, before this Court.

5) I heard learned counsel for the parties and perused the record.

6) ***Appeal from Order no. 82 of 2005 arising out of claim petition No. 19 of 2004:***

Learned counsel for the appellant argued that unreasonable interest of 9% per annum has been awarded over and above the amount of compensation of Rs. 22,000/- awarded in favour of the claimant. On examination of the record, this Court found the said amount of compensation

was awarded by the learned Tribunal on account of injuries sustained by the claimant for which he alleged to have spent Rs.30,000/- in his treatment. From the evidence eon record it was found that the claimant could not file receipts of the medicines for more than Rs. 4,209/-. However, this fact was proved on the record that claimant had to be admitted in Civil Hospital Ranikhet as well as in the Base Hospital Haldwani, where he had to get his fractures plastered. It is also established on the record that for five months he could not start his normal working as an agriculturist. By doing said work, it was stated by the trial court, that the claimant was earning Rs. 3,000/- per month. Learned Tribunal, considering that for four months the claimant was unable to resume his work, awarded Rs. 3,000/- X 4 = Rs. 12,000/- as compensation on account of loss of earning. Adding a sum of Rs. 5,000/- for the pain and agony suffered by the claimant due to injuries and Rs. 1,000/- as costs, a total compensation of Rs. 22,000/- was awarded by the Tribunal. On examination of the record, I do not see any illegality in the said finding of the Tribunal and from all standard, the amount awarded appears to be reasonable. However, the rate of interest at the rate of 9% per annum, even after awarding the costs over the compensation on other accounts, is excessive and the Tribunal should have awarded in the circumstances, only 6% interest on the awarded sum. Considering the facts and circumstances of the case, the appeal arising out of the claim petition No. 19 of 2004 deserves to be allowed only in respect of the reduction in the rate of interest, for the reasons as discussed above.

7) ***Appeal from Order No. 83 of 2005 arising out of claim petition No. 20 of 2004:***

In connection with this appeal, it is argued by learned counsel for the appellant that 1½ year old son of the claimant was not an earning member of the family, as such, compensation to the tune of Rs. 1,50,000/- is excessive. However, it is a settled principle of law that in the matters where the deceased was not an earning member of the family on account of his young age, a notional income is to be taken into account to calculate the pecuniary loss to the dependent. And, various High Courts have considered an amount of Rs. 1,50,000/- as a reasonable amount of compensation in the case of young children. Learned Tribunal has relied on the principle of law laid down by Rajasthan High Court in ***Badri and others Vs. Surendra Kumar and others, reported in III (2002) A.C.C. 714.*** Learned Tribunal for the appellant could not show this Court any case law which may indicate that in such cases an amount of Rs. 1,50,000/- as unreasonable amount. However, as to the rate of interest again, since Rs. 1,000/- has been awarded as costs over and above the amount of compensation awarded, interest at the rate of 9% on the sum awarded, appears to be excessive and the Tribunal should not have awarded interest more than 6% on the awarded sum. Accordingly, appeal arising out of the claim petition No. 21 of 2004 also deserves to be allowed only to the extent of rate of interest from 9% to 6% per annum. This Court finds no illegality as to the findings relating to negligence on the part of the driver of the U.P. State Road Transport Corporation (appellant) and the entitlement of Rs. 1,50,000/- as compensation on account of death of the minor son of the claimant.

8) ***Appeal from Order No. 84 for 2005 arising out of claim petition No. 21 of 2004:***

In this appeal cross objections were also filed on behalf of respondent No. 1.

Learned counsel for the appellant argued that since the deceased Mamta Negi, wife of the claimant, was a housewife, as such, she would not have earned Rs. 15,000/- per annum for the family. I am unable to accept the submission of learned counsel for the reason, that a housewife who works in the family and helps an agriculturist in the agriculture work, cannot be said that she had no capacity of earning, and, that there is no pecuniary loss to the dependent on account of death of such person. The evidence on record shows that the claimant's wife was helping in earnings of the family by selling milk, cured and vegetables. There was no evidence from the side of the U.P. State Road Transport Corporation (appellant) which controverts the evidence adduced on behalf of the claimant. In the circumstances, the notional income of the deceased assessed by the Tribunal at the rate of Rs. 15,000/- per annum cannot be said to be excessive. The multiplier of 18, considering the age of the deceased i.e. 24 years, is reasonable multiplier and it meets the ends of justice. That being so, after deducting one third amount the deceased would have spent on herself, the claimant is entitled to Rs. 1,80,000/- (Rs. 10,000 X 18)as compensation due to death of his wife. Apart from Rs. 5,000/- towards loss of consortium and Rs. 2,000/- on account of funeral expenses. As such total amount to which the claimant was entitled should have been assessed at Rs. 1,87,000/-. In this case also interest at the rate of 9% awarded by the Tribunal is on the higher side and for the reasons as discussed above, it cannot be said that the claimant is entitled to more than 6% interest per annum on the awarded sum.

Learned counsel for the claimant – respondent argued that in the case of notional income of a non-earning member 1/3 amount cannot be deducted towards expenses, which could have been spent on the deceased. In this connection, attention of this Court was drawn to case law laid down in ***Manju Devi Vs. Musafir Paswan reported in 2005 A.C.J. 99.*** But said case law cannot be applied to the present case as here the claimants has set up a case that his wife was actually earning for family by selling milk, curd, vegetables etc. As such, loss assessed is not purely notional. ***Manju Devi*** case (supra) the notional income was that of a young child who was not at all an earning member.

9) In view of above discussion and for the reasons as discussed above, the cross objections filed on behalf of the claimant – respondent No. 1 are liable to be rejected and are accordingly rejected. Accordingly, the appeal No. 84 of 2005 is also allowed, partly and on amount of compensation of Rs. 1,87,000/- rate of interest reduced to 6% per annum instead on 9% per annum awarded in claim petition No. 20 of 2004.

Similarly, the appeal No. 83 for 2005 is also allowed partly only to the extent that the appellant shall be liable to pay only 6% interest per annum on Rs. 1,50,000/- awarded as compensation in claim petition No. 21 for 2004.

And also, the appeal No. 82 of 2005 is allowed partly, only to the extent that the appellant shall be liable to pay only 6% interest per annum on Rs. 22,000/- awarded in claim petition No. 19 of 2004. No order as to costs.

(Prafulla C. Pant, J.)

Dt.: February 21,2006
H.Negi